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SUBJECT: AMBASSADOR DICARLO MEETS WITH INTERNATIONAL CRIMINAL COURT PRESIDENT SONG

Classified By: Ambassador DiCarlo for Reason(s) 1.4(b) and (d)

¶1. (SBU) (Begin summary) Ambassador Rosemary DiCarlo met on Monday, May 18 with International Criminal Court (ICC) President Sang-Hyun Song. They discussed African countries' views of the ICC in light of the indictment of Sudan President Bashir as well as President Song's strong interest in encouraging active U.S. participation in ICC meetings. (End summary.)

¶2. (U) In addition to Ambassador DiCarlo and President Song, in attendance were USUN Legal Counselor Mary McLeod, Attorney-Adviser Mark Simonoff, Special Assistant to the President David Koller and Head of the ICC Liaison Office Karen Odaba Mosoti.

¶3. (SBU) President Song began the meeting by He said that the ICC is 100% a judicial institution, not a political institution. He said that it is the responsibility of the States Parties that created the ICC to defend it and protect it.

¶4. (SBU) In response to Ambassador DiCarlo's query about what he is hearing about calls by some African States to withdraw from the Rome Statute, at first President Song said he had no way of knowing about this. He went on to say that he had heard that Senegal and Djibouti had been actively encouraging African withdrawal. He said that some States are saying one thing at one time, and another at another time. For example, a South African official recently said that Bashir can attend President Zuma's inauguration in South Africa, but that he would be arrested. A few days later, the new Foreign Minister went to Sudan and said criticized the Bashir arrest warrant. Meanwhile, Thabo Mbeki's attitude is "incomprehensible, nebulous." President Song said that the ICC would send high level ICC staff to the upcoming African Union meeting in Addis Ababa in June. President Song will visit key African countries to discuss the ICC with high-level African officials. He understands that European Member States will get together collectively and engage with African States Parties.

¶5. (SBU) According to President Song, the African criticism that the ICC is a European court that is chasing Africans is "totally untrue." The first three situations - Congo, Uganda and the Central African Republic - were all brought to the ICC by those countries themselves. The fourth - Sudan - was brought to the court by the UN Security Council. "We have never targeted any African country," said President Song, noting that he himself is not from Western Europe. "Ignorance is our worst enemy," President Song said, acknowledging that he needs to put extra efforts into public relations and outreach.

¶6. (SBU) Countering arguments that the Bashir arrest warrant was ill-timed, President Song said that there is no

sustainable peace without justice. Peace without justice would be a "flimsy peace."

¶ 7. (SBU) President Song said that the ICC is a fully functioning judicial institution. The judges are all determined to "make this baby successful." There have been forty judgments and decisions by the Appeals Chamber that have been well-received around the world.

¶ 8. (SBU) President Song said that he welcomes the apparently improving relationship between the ICC and the United States, noting that previously the ICC President was "not allowed to visit" the U.S. Mission to the United Nations. He also said that he would whole-heartedly welcome U.S. participation in the upcoming review conference. The preparatory sessions for the review conference are underway and he hopes that the United States will get involved soon, including in discussions of the definition of the crime of aggression. Given that the United States is a permanent member of the Security Council, the U.S. voice must be reflected. Ambassador DiCarlo noted that U.S. policy on the ICC is under review. Legal Counselor McLeod added that there is a U.S. interagency process looking at all aspects of U.S. ICC policy. President Song that he has already noticed a change of attitude on the part of the United States, including a very good recent meeting with War Crimes Ambassador Clint Williamson. President Son g concluded by saying that he hoped that the working relationship between the ICC and the United States will continue to improve. He looks forward to working closely together, including possibly at the review conference next year.

¶ 9. (C) (Comment.) While President Song asserts that the ICC is strictly a judicial institution, he demonstrated an understanding of the international politics surrounding that institution. While initially presenting as modest and even somewhat halting in his manner, he seems savvy about the ICC's most pressing issues, including the importance of reversing African hostility to the ICC and of courting the United States to actively participate in ICC meetings and even become a party to the Rome Statute. (End comment.)

Wolff